

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re:

Lindsay Lampasona, LLC
Debtor

Chapter 7
Case No. 11-19747 JNF

**TRUSTEE'S MOTION TO CONDUCT RULE 2004
EXAMINATION OF JOHN C. KELLY
[Emergency Determination Requested]**

Pursuant to Fed. R. Bankr. P. 2004, Lynne F. Riley, duly appointed Chapter 7 Trustee (“Trustee”) for the estate of Lindsay Lampasona, LLC (“Debtor”), respectfully requests that the Court enter an order authorizing the Trustee to conduct a Rule 2004 Examination of John C. Kelly. In support hereof, the Trustee states as follows:

1. The within debtor (“Debtor”) filed a Chapter 11 petition on October 14, 2011.
2. On October 19, 2011, the Debtor filed the *Debtor’s Motion (A) to Authorize Debtor to Effectuate Purchase and Sale Agreement with Rykor Concrete & Civil Inc.; (B) to Authorize Sale of Assets by Private Sale Free and Clear of Liens, Claims and Interests; (C) to Authorize the Assumption and Assignment of Executory Contracts, and (D) for Related Relief* (“Sale Motion”) [Docket No. 17].
3. Pursuant to the Sale Motion, the Debtor sought authority to enter into an Asset Purchase Agreement (“APA”) with Rykor Concrete & Civil Inc. (“Rykor”), wherein Rykor would purchase substantially all of the Debtor’s tangible assets for a purchase price of \$448,000 (“Purchase Price”).

4. The APA was executed by the Debtor's CEO, Devin Hartnell ("Hartnell"), and Rykor's CEO, John C. Kelly ("Kelly"). The APA is dated as of September 2011.¹

5. On November 16, 2011, the Debtor filed a motion to amend the Sale Motion and APA to exclude a certain executory contract from the purchased assets, which was granted by the Court on November 22, 2011.

6. On December 30, 2011, the Court entered an order granting the Sale Motion and approving the sale of the Debtor's assets to Rykor.

7. Upon information and belief, Kelly was Rykor's founder and principal investor. Rykor was registered to do business in Massachusetts on August 26, 2011.

8. Upon information and belief, the Debtor's principals, Patrick "PJ" Lampasona, Jr. and Anthony "Tony" Lampasona collaborated with Kelly in arranging for the creation of Rykor and the sale of the Debtor's assets to Rykor, with the day to day operation of the company remaining under Tony and PJ's control.

9. Upon information and belief, PJ's mother, Mary Lampasona ("Mary"), was an employee of the Debtor who was hired by Rykor after the sale. Mary had advanced \$150,000 to the Debtor on or about July 16, 2009.

10. Upon information and belief, in conjunction with the sale to Rykor, Kelly agreed to repay Mary's advance at the request of PJ, Tony, and/or Hartnell under a side agreement that was not disclosed to this Court, creditors, or parties in interest as part of the sale process.

11. Upon information and belief, the agreement remained in place even after the bankruptcy filing and the filing of the Sale Motion.

12. On May 21, 2012, the Debtor's case was converted to a case under Chapter 7, and Lynne F. Riley was duly appointed as Trustee of the Debtor's bankruptcy estate.

¹ The APA states it is "effective as of the ____ day of September 2011" with no date filled in.

13. By this motion, pursuant to Bankruptcy Rule 2004, the Trustee seeks authority to conduct an examination of Kelly with respect to the sale process, any payment to Mary or any promise to pay Mary on account of her advance, and any other agreements to pay other insiders of the Debtor or creditors of the Debtor as part of the sale process.

14. The Trustee also seeks production of documents concerning payments to Mary by Kelly or any entity controlled by Kelly, or any promise to make such payment, as set forth in the attached **Exhibit A**.

15. The Trustee seeks emergency determination of this motion. The Trustee issued a subpoena to Kelly on July 16, 2011 and has received no response to date. The Trustee believes that an action based on Kelly's testimony or documents produced by Kelly would potentially be subject to the limitations period of 11 U.S.C. § 546. Therefore, emergency determination is warranted.

WHEREFORE, the Trustee respectfully requests that the Court enter an order:

1. Granting this motion;
2. Granting emergency determination of this motion; and
3. Granting such other and further relief as is just and proper.

Lynne F. Riley, Chapter 7 Trustee,
by her attorneys,

/s/ David Koha
Lynne F. Riley, BBO #561965
David Koha, BBO #679689
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210
(tel) 617-426-5900
(fax) 617-426-8810

Dated: September 5, 2013

CERTIFICATE OF SERVICE

I, David Koha, hereby certify that on September 5, 2013, I served a copy of the foregoing, electronically through the Court's CM/ECF System, or by email by agreement, or by first-class mail, to the following:

By CM/ECF:

Paula R.C. Bachtell on behalf of Assistant U.S. Trustee John Fitzgerald
paula.bachtell@usdoj.gov

Christopher M. Candon on behalf of Creditor Bank of Canton, The
ccandon@sheehan.com, ntoli@sheehan.com

Steven E. Cope on behalf of Creditor Carrol Shepard
scope@copelegal.com, copefilings@copelegal.com

Daniel DeCotis on behalf of Creditor Division of Unemployment Assistance
ddecotis@detma.org

Daniel DeCotis on behalf of Interested Party Michelle Amante, the Acting Director of the Department of Unemployment Assistance
ddecotis@detma.org

Christopher R. Donato on behalf of Defendant United States Small Business Administration
Chris.Donato@USDOJ.Gov

Jennifer V. Doran on behalf of Creditor J. Derenzo Co.
jdoran@haslaw.com, calirm@haslaw.com

John Fitzgerald
USTPRegion01.BO.ECF@USDOJ.GOV

Mark Foss on behalf of Creditor Sterling Concrete, Corp
mfoss@ftwlaw.com, ftwbankruptcy@ftwlaw.com

Jeffrey D. Ganz on behalf of Creditor Bank of Canton, The
JGanz@riemerlaw.com, mshaver@riemerlaw.com

James B Heffernan on behalf of Creditor Chicopee Concrete Service, Inc.
jheffernan@richmaylaw.com

Donald Ethan Jeffery on behalf of Debtor Lindsay Lampasona, LLC
dej@murphyking.com, pas@murphyking.com

Donald Ethan Jeffery on behalf of Plaintiff Lindsay Lampasona, LLC
dej@murphyking.com, pas@murphyking.com

Michael B. Katz on behalf of Creditor Chicopee Concrete Service, Inc.
bankruptcy@bacon-wilson.com, mkatz@baconwilson.com

David B. Madoff on behalf of Defendant Gulf Resources, Inc. d/b/a Stadium Gulf
madoff@mandkllp.com, alston@mandkllp.com

David M. McGlone on behalf of Creditor Whaling City Iron Co.
dmcglone@eckertseamans.com, vrobertson@eckertseamans.com

William R. Moorman, Jr. on behalf of Creditor Greenscape, Inc. and Greenscape Land Design, Inc.
moorman@craigmacauley.com

William R. Moriarty on behalf of Creditor Aggregate Industries Northeast Region, Inc.
wmoriarty@sassooncymrot.com

Paul F. O'Donnell, III on behalf of Creditor J. Derenzo Co.
podonnell@haslaw.com, kabarrett@haslaw.com

Alexander G. Rheume on behalf of Creditor Bank of Canton, The
arheume@riemerlaw.com

Mark Roder on behalf of Creditor Callahan, Inc.
mroder@travelers.com, mmmcdona@travelers.com

Stephan M. Rodolakis on behalf of Creditor Sterling Concrete, Corp
srodolakis@ftwlaw.com, mfoss@ftwlaw.com; ftwbankruptcy@ftwlaw.com

By Email by Agreement:

Douglas Gooding on behalf of Creditor Rykor Concrete & Civil Inc.
dgooding@choate.com

By First Class Mail:

American Express Bank FSB
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

Argus Management Corporation
Attn: Peter Sullivan
15 Keith Hill Road
Suite 100
Grafton, MA 01519

Commonwealth of Massachusetts, Dept. of Workforce Development
19 Staniford Street
Boston, MA 02114

Douglas Gooding on behalf of Creditor Rykor Concrete & Civil, Inc.
Choate, Hall & Stewart
Two International Place
Boston, MA 02110

Murphy & King, P.C.
One Beacon Street
21st Floor
Boston, MA 02108

John C. Kelly
424 Canton Ave.
Milton, MA 02186

/s/ David Koha